Statement of Senator Feinstein in Opposition to Bankruptcy Reform Legislation

March 8, 2005

***Washington, DC** – U.S. Senator Dianne Feinstein (D-Calif.) today announced opposition to the bankruptcy bill now being considered by the Senate.*

She also spoke on behalf of an amendment to the bill by Senator Chuck Schumer (D-NY) that would have prevented anti-abortion activists who obstruct entrances to clinics in violation of federal law from declaring bankruptcy to avoid paying judgments. The following is her statement as delivered on the Floor of the Senate:

"When this body in 1994 passed the Freedom of Access to Clinic Entrances Act we said that individuals should be able to go into clinics without being obstructed. The law was very clear. The law also has led to successful criminal and civil judgments against groups that use intimidation and outright violence to prevent people from obtaining or providing reproductive health services. This law would be seriously damaged if we do not close this loophole that has allowed some anti-abortion extremists to use bankruptcy to shield their assets.

I think the Senator from New York mentioned that the founder of Operation Rescue, Randall Terry, said in 1998, after filing for bankruptcy, "I have filed a chapter 7 petition to discharge my debts to those who would use my money to promote the killing of the unborn."

In my home state of California, there was a similar incident involving a man by the name of John Stoos and several other people, in 1989, who were sued by the operators of a Sacramento abortion clinic for allegedly blocking the clinic's entrance and harassing patients. A judge ordered Stoos and others too pay nearly $100,000 in attorneys' fees incurred by the clinic. As a result, Stoos filed for personal bankruptcy, listing that debt among many he could not pay.

Mr. President, these actions are clear evidence of abuse of the bankruptcy system, and this bankruptcy bill should stop them. So I would hope that the Schumer Amendment would be accepted by this body.

Now, Mr. President, let me use this time to speak a bit more generally about this bill. I voted for this bill when it left committee. I have stated support. And I want to say why.

In committee we were asked to withhold all amendments to the floor. We knew that the bill was not a perfect bill. We've seen it be improved over the years. We knew it was better than the House bill, and with all complicated, difficult bills, the tradition of the Senate

has always been the floor debate and discussion. And I think in a majority of times, as a product of floor debate and discussion, problems in the bills can be remedied.

We knew there were problems in the bill. For example, I have an amendment which I have withdrawn which says that the credit card companies should, in fact, notify a minimum payer of how long it would take that payer of a credit card if he only paid the minimum amount of interest to pay off the debt. Senator Akaka had a similar amendment. It was summarily defeated. I did an amendment; I had two Republican cosponsors. I learned it would also be summarily defeated. Thanks to Senator Shelby and Senator Sarbanes, the Banking Committee has taken an interest in this and in the future will take a look at it.

Nonetheless, the fact is that this bill is really all for the credit card companies, and I know that there is credit card fraud, and I know that has to be met, and I felt that the bill was important to pass. But I also felt that the bill should be balanced and that we should see that the consumer is also protected in this process. Protected with notice of what a minimum payment means and also, frankly, protected against high interest rates.

Senator Dayton moved an amendment which would limit interest rates on credit cards to 30 percent. The amendment was summarily defeated. The fact of the matter is that with penalties, with other charges, with high interest rates and many companies have interest rates well -- believe it or not -- in excess of 30 percent, a minimum payer cannot ever repay the full debt because the interest on the debt, if combined with certain penalties and/or fixed payments, becomes such that it overwhelms the principal. Now, many people don't know that.

The fact is that 40 percent of credit card holders pay off their debt every month, 40 percent make only the minimum payment, and 20 percent are kind of 50/50 in that category. But for those 60 percent who are generally people who are not as informed, not as able to pay back their bill, who may have one, two, three, four, five, six different credit cards, who live -- because this is a credit economy -- on their credit card, credit card companies have been able, with very little interest to the payer of the debt, to solicit huge fees, penalties, and interest rates. And I think this is just plain wrong. And I really believe that if we're unable to correct it, which I had hoped would be corrected by these amendments that have been presented, I just can't vote for this bill as long as these inequities -- and I think gross injustices -- remain.

Let's just for a moment look at the 30 percent interest rate. It's very high. Inflation is about 2 percent. The interest rate on three-month Treasury bills is 2.75 percent. The national average lending rate on a 30-year mortgage is 5.59 percent. And yet an amendment to limit interest rates on credit cards to 30 percent went down dramatically.

I mentioned there are companies that are charging high annual interest rates. Some charge 384 percent, 535percent. Amazingly, one Delaware-based company has charged 1,095 percent. And that's according to the Minnesota Chapter of the National Association of Consumer Bankruptcy Attorneys.

I think the Washington Post, the Los Angeles Times, and other major newspapers have pointed out where fees, rates, and charges have really buried debtors, and they have pointed out a multitude of cases.

A special education teacher from my home state worked a second job to keep up with $2,000 in monthly payments. She collectively sent to five banks to try to pay $25,000 in credit card debt. Even though she didn't use her cards to buy anything else, her debt doubled to $49,574 by the time she filed for bankruptcy last June.

So effectively, you've got interest payments that are half of the debt. She'll never be able to pay that off. And I think to push people like this from chapter 7 into chapter 13 doesn't make sense when what's really the problem here are interest rates and penalties fees that truly do victimize an unsuspecting individual.

How can somebody do that, if somebody is going to charge a 100 percent interest rate? Even one of my own staff members found that simply getting a credit card cash advance resulted in an immediate 3 percent fee, which was simply added to the interest rate.

So the result is that even the most careful credit card users find themselves often swamped, particularly those that can only afford to make a minimum payment, at the fees, charges, and interest pile up making it virtually impossible to ever pay off the debt. I think this amendment would have been a meaningful addition to the bill. It certainly would have added fairness. It certainly would have sent a signal to credit card companies that the sky isn't the limit. And yet it was defeated.

Senator Schumer's asset protection trust amendment, for which I was a cosponsor of, is another indication of where wealthy people could shelter assets and not pay back in chapter 13.

In recent years a number of financial and bankruptcy planners have taken advantage of the law of a few states to create what is called an "asset protection trust." These trusts are basically mechanisms for rich people to keep money despite declaring bankruptcy.

They are unfair, and violate the basic principle of this underlying legislation – that bankruptcy should be used judiciously to deal with the economic reality that sometimes people cannot pay their debts, but to prevent abuse of the system.

This loophole is an example of where the law, if not changed, permits, or even encourages, such abuse. The amendment was simple: it set an upper limit on the amount of money that could be shielded in these asset protection trusts, capping the amount at $125,000. This amount paralleled the limit placed on the similar "homestead exemption" elsewhere in the bill. The homestead exemption allows some assets to be protected from creditors in bankruptcy where they are in the form a residential home. The bottom line is wealthy people would be able to preserve only $125,000 in an asset protection trust.

The proposed cap amount, $125,000, is not a small sum. It is more than enough to ensure that the debtor is not left destitute. But, I believe it is a reasonable amount – it is deliberately based on the now-accepted $125,000 limit for the homestead exemption, which will also remain available to a debtor.

What concerns me is that there seems to be a new policy in the Senate. It appears that the Republican leadership has decided that rather than honoring the 200 plus year

tradition of the Senate as a deliberative body, the Senate should be run like the House. There appears to be a new process being implemented where the Senate should no longer seriously consider amendments on the floor.

We are now in the middle of the second major piece of legislation where the majority has decided that amendments by the minority will be rejected wholesale – regardless of the merits. It appears that even when serious problems in the underlying legislation are raised and even when the Republican leadership agrees that the problem exists, amendments offered by the minority will be rejected.

In fact, when the Judiciary Committee was marking up the bill, Senators were asked to not offer amendments and instead offer them on the floor. Yet, upon reaching the floor, Senators have found that their amendments will not be considered on the merits.

The debate that has occurred, seems to focus on whether we can accommodate the House of Representative's interest in getting a clean bill, rather than are we developing the best policy possible. Congressional Quarterly wrote last week that "[s]o far, GOP leaders have passed only the two measures offered by Republicans. House Republicans have said they will take up a 'clean' bill quickly, but would not even consider one weighed down by amendments."

This may sound like Washington-insider talk. But I do not think it is. The problem is actually very simple. It is the Senate's job to carefully debate, carefully consider, and pass the very best laws we can. Instead, the Senate is being asked to simply pass legislation as drafted regardless of its content.

I cannot support this manner of deliberation. In fact, it is not deliberative at all. We are being asked to simply act as a rubber stamp.

This lack of consideration and care does a disservice to the Senate, and to the Senators who work hard to reach compromises and find common ground. But more importantly, it does a disservice to the American people. We are here to develop the best policy we can, not to simply play political games and jam through legislation for the sake of expediency.

As I began, I want to be clear. I support bankruptcy reform legislation, and I support many of the provisions in the underlying bill. However, throughout this process many important issues have been raised that identify serious problems that must be addressed. The Senate has been and should remain a deliberative body that seeks to draft the best legislation we can. Unfortunately, that is not what we are doing.

And unfortunately, based on these concerns, I regret that I am no longer able to support the bankruptcy legislation. I've decided because of the summary disposition of amendments by the other side that this Democratic member is going to vote "no" on the floor of the Senate."

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